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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

LUDMILA GULKAROV, JANINE
TORRENCE, KELLY MCKEON, and
JOSH CRAWFORD, Individually and on
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

PLUM, PBC, and PLUM, INC., Delaware
corporations,

Defendants.

Case No. 21-cv-00913-YGR

**PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM IN OPPOSITION TO
MOTION TO TRANSFER THESE
RELATED CASES TO THE UNITED
STATES DISTRICT COURT, DISTRICT
OF NEW JERSEY**

Pursuant to this Court’s July 6, 2021 Court Order (Dkt. 74), Plaintiffs Ludmila Gulkarov, Janine Torrence, Kelly McKeon, Josh Crawford, Vanessa Mathiesen, Jessica David, and Heather Age (collectively, “*Gulkarov* Plaintiffs”) submit this supplemental briefing in opposition to Defendants’ motion to transfer this action to New Jersey. (Dkt. 34.).

I. ARGUMENT

A court must have personal jurisdiction over a defendant, and this is true for any requested transferee court. *See Daimler AG v. Bauman*, 134 S. Ct. 746, 753 (2014); *Pac. Coast Marine Windshields v. Malibu Boats*, No. 1:11-CV-01594-LJO, 2011 WL 6046308, at *4 (E.D. Cal. Dec. 5, 2011), *report and recommendation adopted sub nom. Pac. Coast Marine Windshields v. Boats*, No. 1:11-CV-1594 LJO BAM, 2012 WL 12903557 (E.D. Cal. Jan. 4, 2012) (“Well-established authority makes clear that a transferee court must have jurisdiction over the defendants in the transferred complaint.”). When evaluating general personal jurisdiction, “courts must examine the defendant's contacts with the forum at the time of the events underlying the dispute when determining whether they have jurisdiction.” *Steel v. U.S.*, 813 F.2d 1545, 1548 (9th Cir. 1987). *See Delphix Corp. v. Embarcadero Techs., Inc.*, 749 F. App’x 502, 505 (9th Cir. 2018). “[A] general jurisdiction inquiry should consider all of a defendant's contacts with the forum state prior to the filing of the lawsuit, rather than just those contacts that are related to the particular cause of action the plaintiff asserts.” *Doe v. Dinnis*, No. 18-CV-05393-DMR, 2020 WL 9422326, at *4 (N.D. Cal. Feb. 24, 2020), *report and recommendation adopted*, No. 18-CV-05393-YGR, 2020 WL 9422398 (N.D. Cal. Apr. 7, 2020) (quoting *Delphix Corp.*, 749 F. App’x at 506). In determining how far back from the events giving rise to the suit, “most courts use a ‘reasonable time’ standard yielding timeframes of roughly three to seven years.” *Delphix Corp.*, 749 F. App’x at 506 (citations omitted). As such,

the relevant time period to determine whether Plum had sufficient contacts with New Jersey is 2012-2019 – the seven year period leading up to 2019 when the Subcommittee on Economic and Consumer Policy started its investigation into the heavy metals in Plum baby food. (Dkt. 15-1 at 3.) An inquiry into specific jurisdiction “‘focuses on the relationship among the defendant, the forum, and the litigation,’ and ‘the defendant’s suit-related conduct must create a substantial connection with the forum.’” *Alejandro Fernandez Tinto Pesquera, S.l v. Fernandez Perez*, No. 20-CV-02128-LHK, 2021 WL 254193, at *8 (N.D. Cal. Jan. 26, 2021) (quoting *Walden v. Fiore*, 571 U.S. 277, 285 (2014)). The facts do not support a New Jersey court exercising general or specific personal jurisdiction over Plum during the majority of the relevant period even if Plum can establish its headquarters were completely transferred to New Jersey by January 2019.

Plum did not have significant contact with New Jersey during the relevant time period for this case. The *Gulkarov* Plaintiffs’ claims relate to Plum’s failure to properly formulate, manufacture, test, package, and advertise its baby foods. Plum did not manufacture, test, package, or manufacture its baby food in New Jersey during the majority of the time period at issue here. The declaration of Kelly J. Stewart submitted by Plum fails to state that the formulation, manufacturing, testing, packaging, or advertising of Plum’s baby food has ever occurred in New Jersey at all. (Dkt. 34-1.) And publicly available information fails to show that any of Plum’s activity at issue here occurred in New Jersey at any time during the relevant period. To the contrary, this information indicates that Plum’s relevant conduct remained in California throughout any reasonable relevant period. When Campbell acquired Plum in 2013, it stated that Plum’s operations would remain in Emeryville, California¹ and will be operated as a

¹ <https://www.cbsnews.com/news/campbell-soup-buys-plum-organics/>

1 “standalone business.”² Following this directive, “[s]enior members of Plum Organics’
 2 management team, including Grimmer, will join Campbell, and continue to lead Plum and its
 3 mission-driven culture from Emeryville.”³ Mr. Grimmer stayed on as an executive in California
 4 for over five years and departed in March 2019. (Declaration of Rebecca A. Peterson (“RAP
 5 Dec.”); Exs. 1-3.)⁴ During this time, Campbell had two or three principal manufacturing plants
 6 in California that included the Plum business segment and none in New Jersey that manufactured
 7 Plum products. (RAP Dec. Exs. 4-6.) It does not appear that any employee of Plum is located in
 8 New Jersey, yet there are various employees that appear to be located in California. (RAP Dec.
 9 Exs. 2-3.)

11 Additionally, Plaintiff Gulkarov filed the first action against Plum in this District and her
 12 claims arise from purchases of Plum’s baby food made from approximately 2014 through 2017—
 13 a time period Defendant does not dispute it was located in California. (Dkt. 15; ¶23.) This is the
 14 same time period during which Plaintiff David made Plum purchases. Likewise, the claims of
 15 Plaintiffs McKeon and Crawford arise from purchases of Plum baby food made in 2018—when
 16 Plum was still headquartered in California. (Dkt. 15; ¶¶27-29.) As such, the relevant time period
 17 for most of the *Gulkarov* Plaintiffs’ claims cover when there is no dispute that Plum’s conduct
 18 emanated from California—not New Jersey—even if Plum’s current assertion that it completely
 19 moved its headquarters to New Jersey by 2019 is correct.

24 ² <https://www.campbellsoupcompany.com/newsroom/press-releases/campbell-to-acquire-plum-organics-a-leading-premium-organic-kids-nutrition-company/>

25 ³ *Id.*

26 ⁴ <https://www.waterinno.com/people-bio/neil-grimmer>

Plum claims that its January 27, 2021, filing with the California Secretary of State was in error. But Plum also filed a Statement of Information on December 26, 2019, that likewise listed Emeryville, California as its headquarters. (RAP Dec. Ex. 7.) In Plum's February 22, 2021, Certificate of Surrender filed with California's Secretary of State, it did not state that the surrender would retroactively apply to any previous years. (RAP Dec. Ex. 8.) This 2021 filing also stated: "All final returns required under the California Revenue and Taxation Code have been or will be filed with the California Franchise Tax Board," but failed to indicate if those filings would cover the years Plum claims it was not a California business. (*Id.*) These issues should be addressed by Plum if the Court is inclined to find that Plum has transferred all of its business operations out of California, and the *Gulkarov* Plaintiffs likewise respectfully request discovery on this issue.

Therefore, the Court should deny Defendant's motion to transfer this action to New Jersey for lack of personal jurisdiction along with the reasons stated in *Gulkarov* Plaintiffs' prior submissions.

Dated: July 12, 2021

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